

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
(Western Division)**

**KARLA O'NELL NORAMBUENA,
NATALIA TAPIA LEIVA,
ALMENDRA GONZALEZ DE LA PAZ,
DAVID SILVA MORENO, FERNANDO
VILCHES CASTILLO, CLAUDIO
RAMOS, ALEJANDRO PIZARRO,
EDUARDO ANTONIO MUÑOZ
VARGAS, CARILYNS SARAI CAMUS
JORQUERA, GONZALO ESCOBAR
ESPEJO, CATALINA NOEMI RIVAS
MORALES, BAIRON MOREL
GUERRA, and DIEGO CRISTOBAL
AHUMADA SOULODRE,**

Plaintiffs,

vs.

**WESTERN IOWA TECH
COMMUNITY COLLEGE (WITCC);
TERRY YI, ; ROSANA SALGADO
BURRIGHT,; JULINE ALBERT;
TERRY MURELL; JAMES
ZUERCHER; LILY CASTRO;
PREMIER SERVICES, INC., d/b/a J&L
Enterprises, also d/b/a J&L Staffing and
Recruiting Inc.; NANCY ALBRECHT;
CARLOS ESPINOZA; SOLEDAD
ROJAS; JORGE ARCOS; CRISTIAN
SAN MARTIN MATTA; TUR-PAK
FOODS, INC., & ROYAL CANIN USA
INC.;**

Defendants.

Case No. 5:20-cv-4054-LTS-KEM

**PLAINTIFFS' MOTION FOR
ALTERNATIVE SERVICE**

COME NOW the Plaintiffs, by and through their undersigned counsel, and for their Motion for Alternative Service, hereby states the following:

1. The Plaintiffs are Chilean international students who arrived in the United States in August, 2019, on student J-1 visas procured at the guidance and direction of Western Iowa Tech Community College (hereinafter “WITCC”).

2. Carlos Espinoza, Soledad Rojas, Jorge Arcos, and Cristian San Martin Matta (collectively, the “Chilean Defendants”) recruited the Plaintiffs into WITCC’s J-1 visa program by working in concert with WITCC and other defendants.

3. The Plaintiffs accepted offers into the J-1 visa program after being promised free tuition, room, board, and food along with an internship and a degree in their selected field of study.

4. Upon arrival, the Defendants, through an organized scheme, placed the Plaintiffs to work in jobs unrelated to their fields of study, namely processing plants, forcing them to fulfill an exhausting work and academic schedule using threats of deportation and legal action.

5. On November 25, 2020, the Plaintiffs filed a Complaint alleging numerous state and federal causes of action related to, *inter alia*, human trafficking, forced labor, fraud, and breach of contract.

6. With good reason, Chilean Defendants are believed to be located outside of the United States, residing in Chile.

7. Fed. R. Civ. P. 4(f) provides various ways individuals “may be served at a place not within any judicial district of the United States.”

8. Fed. R. Civ. P. 4(f)(1) allows service pursuant to an international agreement such as the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents (hereinafter “Hague Convention”).

9. Fed. R. Civ. P. 4(f)(3) also authorizes for alternative means of service at the direction and discretion of the court if not otherwise prohibited by international agreement.

10. Chile is not a signing member of the Hague Convention therefore it does not restrict the court's discretion in choosing alternative methods of service under Fed. R. Civ. P. 4(f)(3). Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents, Nov. 15, 1965, 20 U.S.T. 361.

11. Chile is a signing member of the Inter-American Convention on Letters Rogatory (hereinafter "IAC"). Inter-American Convention on Letters Rogatory, Jan. 30, 1975, 14 I.L.M. 339, <https://www.oas.org/juridico/english/treaties/b-36.html>. However, service by letters rogatory under the IAC is not mandatory. *Soc. Enter. LLC v. Sociedad Agricola Cato S.A.*, No. 15-CV-4158 (RJD), 2015 WL 13743436, at *2 (E.D.N.Y. Oct. 6, 2015).

12. While Fed. R. Civ. P. 4(f)(2) allows for service through the transmission of letters rogatory, service under this provision is not favored over alternative service allowed under Rule 4(f)(3). *Rio Props., Inc. v. Rio Int'l Interlink*, 284 F.3d 1007, 1015 (9th Cir. 2002). Rules 4(f)(1), (2), and (3) are all separated by the conjunction 'or' demonstrating that "Rule 4(f)(3) is not subsumed within or in any way dominated by Rule 4(f)'s other subsections; it stands independently, on equal footing." *Id.*

13. Moreover, Plaintiffs are not required to attempt any and all other feasible means of service before the court may order alternative service under Rule 4(f)(3). *Id.* Further, attempting service through letters rogatory would unduly delay the proceedings and result in significant costs for the Plaintiffs. *See Preparation of Letters Rogatory*, U.S. DEP'T OF STATE, <https://travel.state.gov/content/travel/en/legal/travel-legal-considerations/internl-judicial-asst/obtaining-evidence/Preparation-Letters-Rogatory.html> (last visited Jan. 25, 2021).

14. Plaintiffs respectfully request this Court approve service of process be effected by email notice, Facebook notice, or both to notify Chilean Defendants of these proceedings.

15. Alternative service of Chilean Defendants through email and Facebook are reasonably calculated under the circumstances and therefore comport with due process requirements. *See Enovative Techs., LLC v. Leor*, 622 F. App'x 212, 214 (4th Cir. 2015).

16. The instant request is not a novel one. Courts have approvingly expanded the use of electronic service means in line with technological progress over the past 20 years,. *See Rio Props., Inc.*, 284 F.3d at 1018 (finding “email was the only court-ordered method of service aimed directly and instantly” at defendant); *Fed. Trade Comm’n v. PCCare247 Inc.*, No. 12 Civ. 7189 (PAE), 2013 WL 841037, at *5 (S.D.N.Y. Mar. 7, 2013) (holding that service by Facebook was reasonably calculated to inform the defendant of litigation because the Facebook accounts were registered under the defendants’ names and ample evidence showed they were not fake accounts); *St. Francis Assisi v. Kuwait Fin. House*, No. 3:16-CV-3240-LB, 2016 WL 5725002, at *2 (N.D. Cal. Sept. 30, 2016) (approving service by Twitter because defendant had an “active Twitter account and continue[d] to use it to communicate”).

17. The Plaintiffs are not aware of any physical addresses for the Chilean Defendants. Further, the Chilean Defendants have consistently communicated with the Plaintiffs before and during this lawsuit through electronic means including email, Facebook, and text message.

18. Further, it is evident the Chilean Defendants possess knowledge of this lawsuit, and the facts upon which it relies, having received extensive local new coverage in both Northwest Iowa and in Chile.

19. In response, Defendant Carlos Espinoza has publicly expressed disapproval of the lawsuit by disseminating his commentary from his personal and long used Facebook account.

20. The particularities and necessities of this case support the court exercising its discretion to allow alternative service of process through email and Facebook.

21. The undersigned counsel conferred with appearing opposing counsel pursuant to LR 7(k). The parties appearing heretofore responded as follows:

- a. WITCC and corresponding defendants take no position;
- b. Premier Services, Inc. and corresponding defendant take no position;
- c. Tur-Pak Foods, Inc. provided no response to our email regarding this motion
- d. Royal Canin USA Inc. takes no position.

WHEREFORE, the Plaintiffs respectfully request this Court grant the Plaintiffs' Motion to affect service upon the Chilean Defendants by alternative service pursuant to Fed. R. Civ. P. 4(f)(3) and for any other relief that would be just and equitable in the premises.

**PARRISH KRUIDENIER DUNN GENTRY
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ATTORNEYS FOR PLAINTIFFS

PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause by:

- | | |
|---|---|
| <input type="checkbox"/> personal service | <input type="checkbox"/> first class mail |
| <input type="checkbox"/> certified mail, return receipt requested | <input type="checkbox"/> facsimile |
| <input type="checkbox"/> Airborne Express (overnight) | <input checked="" type="checkbox"/> electronic filing |
| | <input type="checkbox"/> e-mail |

on January 29, 2021.

I declare that the statements above are true to the best of my information, knowledge, and belief.

/s/ Anita Soderblom

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